

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 280 – HB 547

March 19, 2013

**SUMMARY OF BILL:** Prohibits business establishments, and the business establishment's owners, employees, and agents, from knowingly using or accepting direct cash assistance funds held on electronic bank transfer (EBT) cards or knowingly using EBT cards through access devices for the sale or purchase of specified services or products or in specified establishments including alcoholic beverages, state lottery games, firearms, jewelry, vacation services, adult entertainment, or for the payment of any fees, fines, bail, or bail bonds ordered by a court. Any business establishment, or its owners, employees, or agents, that knowingly allows a prohibited EBT transaction; sells or attempts to sell prohibited services or products; or provides or attempts to provide cash back to the EBT card recipient, with knowledge that the cash will be used for a prohibited purchase, commits a Class A misdemeanor and is subject to a fine of \$2,500 per occurrence for the first violation and \$5,000 per occurrence for two or more violations or as otherwise provided by law. Any business establishment, or its owners, employees, or agents that knowingly violate the provisions of the bill will also be referred to the appropriate state regulatory authority for possible disciplinary action. Any business establishment, and its owners, employees, or agents, that receives payment for items purchased in the establishment by or through direct cash assistance funds held on EBT cards or access devices are required to ensure that each owner, employee, and agent successfully completes a training program within 30 days of the later of June 1, 2013, or commencing employment or service with the establishment and receives a certificate of completion from the program. The store owner is required to provide the names of certified employees to the Department of Human Services (DHS). Establishments accepting EBT cards as a form of payment are required to post signs listing prohibited products and the Department's fraud hotline in a conspicuous area.

Establishments where the primary business is the sale of firearms, that sells handguns, and that is licensed as a retail package store and adult oriented establishments are required to post a sign next to each automated teller machine (ATM) or point of sale (POS) terminal located on the premises informing a potential buyer that the ATM or POS terminal may not be used to receive cash benefits under Title 71. An establishment that does not post this sign or an individual who attempts to use an ATM or POS terminal with this sign posted to access cash assistance benefits commits a Class C misdemeanor.

Recipients of direct cash assistance are prohibited from knowingly making a prohibited purchase. A recipient that knowingly makes a prohibited purchase is required to reimburse DHS for the amount spent on the purchase. If a recipient knowingly makes a second prohibited purchase, the recipient is disqualified from the direct cash assistance program for a period of sixty days. If a recipient makes a third prohibited purchase, the recipient is disqualified from the program permanently. The DHS is required to provide notice and a hearing pursuant to Title

71, Chapter 3, Part 1, and rules promulgated pursuant to the part before disqualifying an individual from the direct cash assistance program.

The DHS is required to assist store owners in maintaining policies and practices to prevent direct cash assistance from being used in any EBT transactions at specified establishments. DHS is required to develop a sign specifying prohibited products and the DHS's fraud hotline and to make the sign available on the DHS's website. DHS is required to report in writing the results of implementation of the bill, specifically the effectiveness and efficiency of the mandates, to the Senate Health and Welfare Committee, the Consumer and Human Resources Committee of the House of Representatives, and the Government Operations Committees of the Senate and House of Representatives on or before January 15, 2015.

## **ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures - \$22,400/One-Time  
\$379,300/Recurring**

**Other Fiscal Impact – Civil penalties will be collected as a result of violations by persons and business entities. It is unknown how many violations may occur and how much the increase in state revenue will be future fiscal years.**

**Implementation of this bill could jeopardize \$9,576,200 in federal funds. According to the Department of Human Services (DHS), the restrictions on assistance spending and EBT transactions in the proposed legislation are broader in scope than the federal restrictions enacted by the Middle Class Tax Relief and Job Creation Act of 2012. According to the DHS, under 42 U.S.C. § 609 the Department of Health and Human Services (HHS) will impose a five percent penalty on the state family assistance grant if the state is in violation of federal law. According to the HHS website, the penalty will be imposed on the fiscal year following a final decision by HHS.**

### **Assumptions:**

- Although the term “food stamp benefits” is defined in the bill, it is assumed that the bill applies to assistance provided through the Temporary Assistance for Needy Families (TANF) program because the term is not used again in the bill. According to DHS, application of the bill to Supplementary Nutrition Assistance Program (SNAP) benefits [food stamp benefits] would be inconsistent with federal law.
- The source of DHS approved training for employees is not identified in the bill. It is assumed that DHS will provide the training.
- According to DHS, the number of appeals heard by the Appeals and Hearings Division will increase slightly due to alleged violations of the provisions prohibiting the use of funds for certain purchases and the withdrawal or use of funds at specified locations. According to DHS, no additional employees will be required for appeal processing.

- DHS contracts with an outside vendor for EBT services. EBT transactions will be blocked from ATMs and point of sale (POS) terminals at prohibited locations by the vendor. Initial setup and installation of a blocking system will result in a one-time expenditure of approximately \$4,800 (40 hours x \$120 per hour rate).
- According to DHS, Supplemental Nutrition Assistance Program (SNAP) and cash transactions flow through the same system. To block only cash transactions, all transactions must be examined individually. To block only cash transactions will cost \$.12 per cost per case month. The resulting increase in expenditures for blocking only cash transactions per year is estimated by DHS to be \$73,200.
- According to DHS, ongoing monthly research and support is estimated to cost \$10,800 [(10 hours per month x 12 months) x \$90 per hour rate]. The total resulting increase in recurring expenditures for blocking only cash EBT transactions through the vendor is estimated to be \$84,000 per year (\$73,200 + \$10,800).
- According to DHS, the Investigation Division will need one full-time employee to build, maintain, and update the blocked terminal list and to assist ATM owners and retailers resulting in a recurring increase in state expenditures of \$69,100 (\$36,400 salary and taxes + \$11,100 benefits + \$21,600 for office space, communications, networking, travel, postage, and supplies) and a one-time increase in state expenditures of \$4,400 (\$3,300 office landscaping + \$200 wiring + \$900 computer/printer.)
- According to DHS, the Investigation Division will need one part-time employee to assist with appeals and hearings related to blocked ATMs and POS terminals resulting in a recurring increase in state expenditures of \$29,100 (\$22,500 salary + \$6,600 for communications, networking, travel, postage, and supplies) and a one-time increase in state expenditures of \$4,400 (\$3,300 office landscaping + \$200 wiring + \$900 computer/printer).
- According to DHS, two full-time employees will be required to provide training to employees required by the bill to be certified to accept EBT card purchases resulting in a recurring increase in state expenditures of \$197,100 [2 x (\$49,000 salary and taxes + \$13,400 benefits + \$36,150 for office space, communications, networking, travel, postage, and supplies) and a one-time increase in state expenditures of \$8,800 [2 x (\$3,300 office landscaping + \$200 wiring + \$900 computer/printer).
- The total one-time increase in state expenditures is estimated to be \$22,400 (\$4,800 computer programming + \$4,400 full-time investigation employee + \$4,400 part-time investigation employee + \$8,800 full-time training employees).
- The total recurring increase in state expenditures is estimated to be \$379,300 (\$84,000 computer programming and maintenance + \$69,100 full-time investigation employee + \$29,100 part-time investigation employee + \$197,100 full-time training employees).
- The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96) requires states to prevent the use of TANF assistance in EBT transactions at specified locations (liquor stores, casinos and gaming establishments, and retail establishments providing adult-oriented entertainment). A state that fails to implement and maintain policies and practices necessary to prevent prohibited transactions will be penalized an amount equal to five percent of the state family assistance grant.
- According to DHS, the restrictions on assistance spending and EBT transactions in the proposed legislation are broader in scope than the federal restrictions enacted by the Middle Class Tax Relief and Job Creation Act of 2012. 45 C.F.R. § 234.11 prohibits

restrictions on the use of individual assistance. According to DHS, this federal regulation effectively prohibits any state law that imposes restrictions beyond those authorized under federal law.

- According to DHS, under 42 U.S.C. § 609 the Department of Health and Human Services (HHS) will impose a five percent penalty on the state family assistance grant if the state is in violation of federal law. The fiscal year 2012 TANF Block Grant was \$191,523,800. If HHS imposed a five percent penalty, the state would be in jeopardy of losing \$9,576,190 in federal funds ( $\$191,523,800 \times 0.05$ ).

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'Lucian D. Geise', is positioned above the printed name.

Lucian D. Geise, Executive Director

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